IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5134 OF 2003

Shri Narayan Madhavrao Nimbalkar ..Petitioner
Vs.
Shri Rajaram Hari Gadekar and ors. ..Respondents

Mr. Amit B. Borkar for petitioner.
Mr. N.D. Yelkar for respondents.

CORAM: B.H. MARLAPALLE, J.

Date : July 25, 2006.

P.C.:

1. Heard Mr. Borkar the learned counsel for the petitioner. The petitioner submitted an application at Exh.20 in Special Darkhast No.19 of 2003 praying that the decree passed in Regular Civil Suit No.99 of 2002 which was the subject matter of the Darkhast proceeding be stayed till the Special Civil Suit No.217 of 2002 filed by him is decided. The said application has been rejected by the learned Civil Judge, Senior Division, Kolhapur on 19/6/2003 and hence this petition under Article 227 of the Constitution.

2. There is no doubt that by the registered sale deed dated 5/2/1998 the petitioner sold the property

which was the suit property in Special Civil Suit No.99 of 2002 in favour of his daughter and the daughter, in turn, sold the property to the present respondents who were the plaintiffs in RCS No.99 of 2002. The said suit was decreed on 30/12/2002 and the decree was not challenged by the daughter, who was impleaded as the defendant in the said suit. The petitioner has filed Special Civil Suit No.217 of 2002 with a prayer that the registered sale deed dated 5/2/1998 be declared as illegal, null and void ab-initio. He claims that he being an old man of 88 years of age, his daughter misrepresented and got the sale deed signed by him and registered subsequently fraudulently. There is no doubt that till the respondents approached the trial court by filing RCS No.99 of 2002 and the said suit was decreed, the petitioner kept quiet and after about 4 years from the signing of the sale deed he has approached the Civil Court by filing Special Civil Suit No. 217 of 2002 praying for a declaration that the said sale deed was illegal. The Executing Court, therefore, was right in holding that there was no reason to implead the present petitioner as the third party or as an obstructor within the meaning of Rule 101 of Order XXI

of C.P.C., more so when the sale deed specifically states that the possession of the suit land was already handed over to the daughter and the daughter has not taken any steps to approach the trial court for setting aside the ex parte decree.

3. Hence the petition is rejected.

(B.H. Marlapalle,J.)